

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF FLORIDA

3 CASE NO. 10-80069-CR-ZLOCH

4 UNITED STATES OF AMERICA, Fort Lauderdale, Florida

5 Plaintiff, September 15, 2010

6 vs.

7 GILBERTO JORDAN,

8 Defendant. Pages 1 - 53

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10  
11 SENTENCING  
12 BEFORE THE HONORABLE WILLIAM J. ZLOCH  
13 UNITED STATES DISTRICT JUDGE

14 APPEARANCES:

15 FOR THE GOVERNMENT: HILLARY DAVIDSON, ESQUIRE  
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I N D E X  
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WITNESS: DIRECT CROSS REDIRECT RECROSS  
JON LONGO

By Ms. Davidson 8 18  
By Ms. Rosen-Evans 14

WITNESS: DIRECT CROSS REDIRECT RECROSS  
RAMIRO CRYSTAILIS

By Ms. Davidson 24

1 THE COURT: Good afternoon. Please be seated.

2 Calling case No. 10-80069-Criminal.

3 Counsel, would you note your appearances for the  
4 record.

5 MS. DAVIDSON: Good afternoon, Your Honor, Hillary  
6 Davidson from the Human Rights and Special Prosecution Section  
7 of the Department of Justice for the government.

8 THE COURT: Good afternoon.

9 MS. VILLAFANA: Good afternoon, Your Honor. Marie  
10 Villafana for the United States. And with us also is Special  
11 Agent Jon Longo from ICE.

12 THE COURT: Good afternoon.

13 SPECIAL AGENT LONGO: Good afternoon, Your Honor.

14 MS. ROSEN-EVANS: Good afternoon, Your Honor. Robin  
15 Rosen-Evans on behalf of Mr. Jordan. Also seated at counsel  
16 table is Brenda Bryn. We are both attorneys with the Federal  
17 Public Defender's Office.

18 THE COURT: Good afternoon.

19 Let the record reflect that Gilberto Jordan is present  
20 and in the courtroom. Can I have the representative from the  
21 probation office note his appearance.

22 THE PROBATION OFFICER: Good afternoon, Your Honor.  
23 Michael Santucci from the U.S. Probation Office from West Palm  
24 Beach.

25 THE COURT: Good afternoon.

1 Can I have the court interpreter note her appearance.

2 THE COURT INTERPRETER: Good afternoon, Joelle Haskey.

3 THE COURT: Good afternoon. We are here for  
4 sentencing. Ms. Evans, have you read in its entirety the  
5 revised presentence report and the addendum to it?

6 MS. ROSEN-EVANS: Yes, Your Honor.

7 THE COURT INTERPRETER: Excuse me, Your Honor?

8 THE COURT: Have you discussed those papers fully  
9 with your client?

10 MS. ROSEN-EVANS: Yes, I have, Your Honor.

11 THE COURT: Are there any objections or any motions  
12 from the defense to anything contained in the advised PSR?

13 MS. ROSEN-EVANS: No, Your Honor, only the defendant's  
14 response to the government's request for --

15 THE COURT: I have that.

16 MS. ROSEN-EVANS: Thank you, Your Honor.

17 THE COURT: Mr. Jordan, have you had read to you in  
18 its entirety in Spanish the revised resentence report and the  
19 addendum to it?

20 THE COURT INTERPRETER: I didn't hear, I'm sorry.

21 THE COURT: Have you had read to you in its entirety  
22 in Spanish the revised presentence report?

23 THE DEFENDANT: Yes.

24 THE COURT: And the addendum to it?

25 THE DEFENDANT: Yes.

1 THE COURT: And have you discussed those papers fully  
2 with your lawyer?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you have any objections or any motions  
5 to anything contained in the revised PSR?

6 THE DEFENDANT: No.

7 THE COURT: And the government has filed its objection  
8 to the presentence report and its motion for an upward  
9 departure. Are there any additional objections or motions from  
10 the government?

11 MS. DAVIDSON: No, Your Honor.

12 THE COURT: All right. Let me hear from the  
13 government on its objection, and then we'll take up the motion.  
14 Use the podium, please.

15 MS. DAVIDSON: Your Honor, probation's recommendation  
16 for the reduction for Mr. Jordan's acceptance of responsibility  
17 appears to be based on the letter he submitted after his plea  
18 in which he stated he was merely following orders and that he  
19 was threatened with physical harm if did he not participate in  
20 the massacre.

21 But, Your Honor, not in the pre-arrest interview, not  
22 in the post-arrest debriefing, and not in the factual  
23 allocation before Your Honor at the plea hearing in July did he  
24 claim that he was merely following orders or that he would --  
25 that he was threatened with physical harm if he did not

1 participate in the massacre.

2 Defendant's counsel suggests that these are  
3 explanations. The government sees no distinction between his  
4 explanations and justification for the conduct.

5 Under section 3E1.1 of United States sentencing  
6 guidelines, in order to be eligible for the acceptance of  
7 responsibility, downward departure, a reduction, the defendant  
8 must admit to all relevant conduct. The government submits  
9 that he has not done so here with these 11th hour  
10 justifications.

11 His claims are also belied by the facts in this case.  
12 After the massacre, Mr. Jordan did not leave the kaibils.  
13 Instead he went back to the kaibil school, enrolled in the  
14 course to become a full-fledged kaibil. Neither did he leave  
15 the military. He stayed in the military until he left  
16 Guatemala to come to the United States and entered illegally  
17 here.

18 Your Honor, we have Special Agent Longo who will offer  
19 testimony to support our objection to the reduction for the  
20 acceptance of responsibility.

21 THE COURT: Let me just -- I'm just curious about one  
22 thing. Even if the Court were to agree with the government on  
23 the acceptance of responsibility, the guideline range does not  
24 change, correct?

25 MS. DAVIDSON: That's correct. Of course, Your Honor,

1 we have made the motion for the upward departure.

2 THE COURT: I understand that. But I mean, do you  
3 want to spend time on the acceptance of responsibility since  
4 it's not going affect the guideline range even if you are  
5 successful?

6 In other words, the only thing that will change will  
7 be the total offense level which will go from 6 to 8. The  
8 criminal history category will remain the same. I think the  
9 fine range changes. The guideline range will still be 0 to 6  
10 months with supervised release. That term remains the same,  
11 correct?

12 THE PROBATION OFFICER: That's correct, Your Honor,  
13 two to three years.

14 THE COURT: And the probation would remain the same?

15 THE PROBATION OFFICER: That's correct, Your Honor.

16 THE COURT: So I just wanted to mention that to you.  
17 I mean, I'm sure you thought about it. It's your decision,  
18 however you would like to proceed, or do you want to spend time  
19 on your motion for the upward departure?

20 MS. DAVIDSON: We would like to spend time on our  
21 motion for the upward departure and variance, Your Honor.

22 THE COURT: Okay. With respect to your motion for  
23 upward departure, is that something that you would want to  
24 present testimony or is that legal argument?

25 MS. DAVIDSON: Yes, Your Honor. We have -- we would

1 like to present testimony in support of our motion and we would  
2 like to reserve our legal argument after the testimony.

3 THE COURT: All right. Fine. Call your first  
4 witness.

5 MS. DAVIDSON: Yes, Your Honor.

6 THE COURT: Who is your first witness?

7 MS. DAVIDSON: I'm sorry, Your Honor. This is ICE  
8 Special Agent Jon Longo.

9 THE COURT: Please remain standing and raise your  
10 right hand.

11 JON LONGO  
12 Was called as a witness and after being duly sworn on oath was  
13 examined and testified as follows:

14 THE COURT: Please be seated.

15 THE WITNESS: Thank you.

16 THE COURT: Please speak directly into that microphone  
17 so we will -- so that we will be able to hear you.

18 Please state your full name for the record and spell  
19 your last name for the reporter.

20 THE WITNESS: It's Jon Longo, J-O-N L-O-N-G-O.

21 THE COURT: Thank you very much.

22 You may proceed.

23 DIRECT EXAMINATION

24 BY MS. DAVIDSON

25 Q Good afternoon, Special Agent Longo.



1 A Good afternoon.

2 Q You are the case agent on this case, United States versus  
3 Jordan?

4 A Yes.

5 Q And in your role as case agent, did you become familiar  
6 with the facts as related to the massacre at Dos Eres?

7 A Yes, I did.

8 Q And in your role as case agent, did you become familiar  
9 with the facts as related to Mr. Jordan's naturalization as a  
10 United States citizen?

11 A Yes, I did.

12 Q And in your role as case agent, did you become familiar  
13 with Mr. Jordan's military history in Guatemala?

14 A Yes.

15 MS. DAVIDSON: Your Honor, may I approach?

16 BY MS. DAVIDSON

17 Q Special Agent Longo, I am showing you what has been marked  
18 as Government's Exhibits 1 through 9. You may take those.

19 THE COURT: Has the defense seen these exhibits?

20 MS. ROSEN-EVANS: Yes, I have, Your Honor.

21 THE COURT: Any objection to them?

22 MS. ROSEN-EVANS: May I have one moment, Your Honor.

23 THE COURT: Yes.

24 MS. ROSEN-EVANS: No objection.

25 THE COURT: Government's Exhibit No. 1 through and

1 including 9 are in evidence.

2 MS. DAVIDSON: Thank you.

3 BY MS. DAVIDSON

4 Q Can you briefly tell us what Exhibits 1 through 9 are?

5 A Yes, Government's Exhibits 1 through 6 are photographs  
6 that were taken regarding the exhumation at Las Dos Erres.

7 Q And then Exhibits 8, 9?

8 A Exhibit 7 is the copy of a cover of a magazine regarding  
9 Dos Erres that was published in August of 1994, and Exhibits 8  
10 and 9 are reports regarding the exhumation there at Dos Erres.

11 Q Okay. I would like to just briefly ask you a few  
12 questions about the chronology just so that we are a little bit  
13 oriented.

14 Can you tell me when the massacre at Dos Erres occurred?

15 A In December of 1982.

16 Q And you referred to an exhumation. When did the  
17 exhumation of the well at Dos Erres take place?

18 A In 1994 and 1995.

19 Q And when did Mr. Jordan apply to naturalize as a United  
20 States citizen?

21 A In 1996.

22 Q And when did he have his naturalization interview?

23 A The interview was in 1999 and he was also sworn as a  
24 naturalized U.S. citizen also in 1999.

25 Q Now, during the course of this case, did you interview

1 Mr. Jordan?

2 A Yes, I did.

3 Q And can you tell me on what occasions you interviewed him?

4 A I interviewed Mr. Jordan on three separate occasions, all  
5 of which occurred in May of this year. Once at his home in  
6 Delray Beach, Florida, and then two other times, once at the  
7 United States Attorney's Office in West Palm Beach, and the  
8 final time was at the Public Defender's Office in West Palm  
9 Beach.

10 Q And when you interviewed Mr. Jordan at his home, what, if  
11 anything, did he say about whether he had served in the  
12 military in Guatemala?

13 A He admitted that he was in the military. He explained his  
14 military career which spanned approximately 12 years. And he  
15 mentioned that he was, in fact, at Las Dos Erres. He admitted  
16 to participated in the killing at Dos Erres and he admitted to  
17 throwing a baby into the well as Dos Erres. I'm sorry, and he  
18 also admitted to leading people to the well essentially to  
19 their deaths at the well.

20 Q When you interviewed Mr. Jordan at his home, what, if  
21 anything, did he say about being threatened with physical harm  
22 if he didn't participate?

23 A He didn't say anything about specifically being  
24 threatened. He did mention that at one point when he had the  
25 infant in his arms and he was carrying it to the well that he

1 was crying. He stated that a friend of his Sergeant Rosales  
2 saw him and told Mr. Jordan that he better keep his composure  
3 and that the other kaibils could kill him.

4 Q You mentioned two additional interviews with Mr. Jordan at  
5 the U.S. Attorney's Office and also at the Public Defender's  
6 Office. At either one of these interviews, did Mr. Jordan  
7 repeat this encounter, this story, about this encounter with  
8 sergeant Rosales?

9 A He did. He mentioned that Sergeant Rosales was his friend  
10 and spoke of that incident again. When he was probed further  
11 about being specifically threatened, he denied it.

12 Q What was Mr. Jordan's military history after the massacre?

13 A When the massacre occurred, as Mr. Jordan explained it, he  
14 wasn't a kaibil at that time. He was part of an attachment is  
15 what he called it. So when the massacre ended, he went back to  
16 the kaibil school, enrolled into the school, and then became a  
17 full-fledged kaibil following the massacre.

18 Q And when did Mr. Jordan leave the military in Guatemala?

19 A Approximately two and a half years later. According to  
20 him, it was 1985. According to some of the records that we  
21 received from Guatemala, it was 1986.

22 Q And I would like to direct your attention again to  
23 Government's Exhibit 7.

24 A Yes, ma'am.

25 Q You testified earlier that the exhumation was in July of

1 1994?

2 A Correct.

3 Q Can you describe more particularly what this exhibit is?

4 A This is the copy of magazine cover that was published, as  
5 I said earlier, in August of 1994, and on the cover is a  
6 picture that was found at the exhumation site at Dos Erres.

7 Q And this was published where, do you know?

8 A In Guatemala.

9 Q One more question. The interview at Mr. Jordan's home,  
10 what, if anything, did he say about whether he was just  
11 following orders?

12 A That was never said.

13 Q Thank you, Special Agent Longo.

14 A You're welcome.

15 THE COURT: Before there's any cross-examination,  
16 Agent, did Mr. Jordan say anything else to you about his  
17 involvement in the massacre?

18 THE WITNESS: What he said, Your Honor, was that he  
19 was present, that he threw a baby in the well, and that he led  
20 people to the well where other kaibils killed them.

21 THE COURT: Cross-examination.

22 MS. ROSEN-EVANS: Thank you, Your Honor.

23 THE COURT: One last question, I'm sorry. I apologize  
24 for interrupting you.

25 But, agent, how many individuals were murdered at Dos

1 Erres?

2 THE WITNESS: I want to say approximately 260, sir.

3 THE COURT: In the single incident?

4 THE WITNESS: Correct. The massacre occurred over  
5 approximately two days.

6 THE COURT: Cross-examination.

7 MS. ROSEN-EVANS: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MS. ROSEN-EVANS

10 Q Agent Longo, you indicated that well at Dos Erres, the  
11 exhumation occurred in 1995, is that correct?

12 A In 1994 and 1995.

13 Q Okay. And charges in Guatemala were eventually filed,  
14 were they not?

15 A They were.

16 Q And what year was that?

17 A I believe it was 1996.

18 Q And by 1996 Mr. Jordan was already in the United States,  
19 was he not?

20 A Correct.

21 Q Okay. In fact, he had come to the United States probably  
22 more than a decade earlier, correct?

23 A Yes, ma'am.

24 Q So at the time that he left Guatemala, there were no  
25 charges pending against him that you know of?

1 A Not that I know of.

2 Q And, in fact, the discovery of the bodies at Dos Erres had  
3 not yet occurred, correct?

4 A I don't know.

5 Q You don't know. Okay.

6 Now, you indicate that you interviewed my client on three  
7 separate occasions, is that correct?

8 A Yes, ma'am.

9 Q First interview occurred at his residence on May 14, is  
10 that correct?

11 A I believe it was May 4th, if I'm not mistaken.

12 Q May 4th. Okay. May 4th, is that correct?

13 A I believe so, yes.

14 Q And you did a report on that interview, did you not?

15 A Yes, ma'am.

16 MS. ROSEN-EVANS: Your Honor, may I approach the  
17 witness?

18 BY MS. ROSEN-EVANS

19 Q I would like to show you what's been marked at this point  
20 just for identification as Defendant's Exhibit 1. Can you tell  
21 me, do you recognize that report?

22 A Yes, ma'am.

23 Q And how do you recognize it?

24 A I wrote it.

25 Q Okay. I want to direct your attention to Bates Nos. 234

1 to 235. Can you please look those two pages over.

2 A I'm all set, ma'am.

3 Q Okay. Do you remember Mr. Jordan making the following  
4 statement to you:

5 Jordan stated that, from what he knew, the operation,  
6 referring to Dos Erres, was to be done without anyone knowing.  
7 Do you remember him stating that?

8 A I do.

9 Q Do you remember him also stating, he said he did not know  
10 who in particular gave the orders, but that it came from the  
11 ministry of defense?

12 A I do.

13 Q Okay. Further quoting from that same statement, do you  
14 remember him stating, Jordan stated he did not want to  
15 participate in the killing of the villagers? Do you remember  
16 him stating that?

17 A I do.

18 Q Do you remember him further stating he described Sergeant  
19 Rosales telling him not to cry and that if he did not kill the  
20 infant, that the other kaibils would kill him? Do you remember  
21 that?

22 A Yes.

23 Q Okay. Now, showing you what's been marked for this  
24 purposes as Defendant's Exhibit 2, can you please tell me  
25 whether you recognize that document?



1 A I do.

2 Q And how do you recognize it?

3 A I wrote it.

4 Q Okay. Can you please familiarize yourself with page --  
5 starting at page 6 through 8?

6 A Okay, ma'am.

7 Q Now, this was the interview that occurred both at the U.S.  
8 Attorney's Office and then at my office, is that correct?

9 A Yes, ma'am.

10 Q Do you remember Mr. Jordan making the following statement?

11 Jordan stated that he did not know what was going to  
12 happen at Dos Erres. Do you remember him stating that?

13 A Yes.

14 Q Do you remember him stating, he said Ramirez gave orders  
15 to start killing the villagers, but he, Ramirez, did not  
16 explain why?

17 A Yes.

18 Q Do you remember him stating that all officers including  
19 Barontes were giving orders to bring people to the well and to  
20 kill them quickly?

21 A Yes.

22 Q Do you remember him further stating that if he had not  
23 participated in the killings, he would not be here today?

24 A Yes.

25 Q Okay. Now, further on in the report, do you remember him

1 stating, no kaibils protested at Dos Erres; although, he,  
2 Jordan, wanted to? Do you remember that?

3 A Yes, ma'am.

4 Q Do you further remember him stating that he never saw a  
5 kaibil protest orders during any operation?

6 A Yes.

7 MS. ROSEN-EVANS: Nothing further, Your Honor. Thank  
8 you.

9 THE COURT: Redirect.

10 MS. DAVIDSON: Your Honor, I would just like to show  
11 the witness one paragraph of one of the exhibits as a follow-up  
12 to a question that you asked.

13 THE COURT: Go right ahead.

14 MS. DAVIDSON: May I approach?

15 THE COURT: Yes.

16 MS. DAVIDSON: Thank you.

17 REDIRECT EXAMINATION

18 BY MS. DAVIDSON

19 Q Special Agent Longo, I'm going to ask you to look at  
20 Exhibit 9.

21 A Okay.

22 THE COURT: Government's 9?

23 MS. DAVIDSON: Yes, Your Honor.

24 BY MS. DAVIDSON

25 Q It actually has a number on the right-hand corner,

1 M04322-1-0028. It's page 23 of the document.

2 A Okay.

3 Q I would like you to look at the paragraph that begins as a  
4 result. It's at the bottom of the page. Can you please read  
5 for the court that paragraph.

6 A Sure. As a result of this preliminary work carried out by  
7 members of FAMDEGUA and EAAF, a list of all the people who were  
8 assassinated was drawn up. The total number of victims  
9 documented by name until now is at the very least 222 people.  
10 The real total number, however, is probably higher due to the  
11 great number of children whose names were not known by the  
12 witnesses.

13 Q Thank you. And just for the record, what is EAAF?

14 A That is the exhumation team.

15 Q And FAMDEGUA?

16 A Nongovernmental organization that was a voice for the  
17 victims at Dos Erres.

18 MS. DAVIDSON: Thank you, Special Agent Longo.

19 THE WITNESS: You're welcome.

20 THE COURT: Any recross?

21 MS. ROSEN-EVANS: No, Your Honor. Thank you.

22 THE COURT: Thank you, Agent. You may step down.

23 THE WITNESS: Thank you.

24 MS. DAVIDSON: Your Honor, we would like to call our  
25 next witness.

1 THE COURT: Go ahead.

2 MS. DAVIDSON: The government calls Mr. Ramiro  
3 Cristailes.

4 THE COURT: Please step up to the witness stand.

5 THE WITNESS: Yes, Your Honor.

6 THE COURT: Please remain standing and raise your  
7 right hand.

8 RAMIRO CRISTAILES

9 Was called as a witness and after being duly sworn on oath was  
10 examined and testified as follows:

11 THE COURT: Please be seated. Please speak directly  
12 into the microphone so that we will be able to hear you.

13 Please state your full legal name for the record and  
14 spell your last name for the reporter.

15 THE WITNESS: Yes, my name is Ramiro Antonio Consario  
16 Cristailes.

17 THE COURT: Would you spell your last name.

18 THE WITNESS: C R I T -- sorry.

19 THE COURT: That's all right.

20 THE WITNESS: C-R-I-S-T-A-I-L-E-S.

21 THE COURT: Thank you very much.

22 You may proceed.

23 DIRECT EXAMINATION

24 BY MS. DAVIDSON

25 Q Good afternoon, Mr. Cristailes.

1 A Good afternoon.

2 Q Mr. Cristailes, where were you born?

3 THE COURT: Counsel, before you begin, let me -- the  
4 court interpreter needs to take a short break. We will be in  
5 recess for five minutes. Let's have everyone back in here at a  
6 quarter of.

7 Just keep the defendant here, Marshal. The Court's in  
8 recess.

9 THE COURT INTERPRETER: Thank you, Your Honor.

10 (Thereupon, a recess was taken at 5:40 p.m.)

11 THE COURT: Let the record reflect that the government  
12 is present, Ms. Evans is present, Gilberto Jordan is present,  
13 and in the courtroom the probation officer is present and the  
14 court interpreter is present.

15 All right. Counsel, you may proceed.

16 MS. DAVIDSON: Thank you Your Honor.

17 BY MS. DAVIDSON

18 Q Mr. Cristailes, where were you born?

19 A I was born in Las Cruces, Peten.

20 Q And in what country is that?

21 A Guatemala.

22 Q Did there come a point where your family moved from Las  
23 Cruces?

24 A Yes.

25 Q And where did they move to?

1 A To Dos Erres.

2 Q When you lived in Dos Erres, who did you live with?

3 A I lived with my father and my mother and six brothers

4 and -- I mean, five brothers and one sister.

5 Q And where were you in the birth order?

6 A I was the four number of the family, the young one, the

7 youngest of the four.

8 Q You were the fourth child?

9 A Yes.

10 Q And who was the youngest?

11 A My little sister.

12 Q And was there another child in between you?

13 A Yes.

14 Q Do you know what your father and mother did for a living

15 in Dos Erres?

16 A They are farmers.

17 Q Mr. Cristailes, I would like to direct your attention to

18 December 1982. Approximately how old were you in

19 December 1982?

20 A I was five years old.

21 Q Can you tell me what happened in December 1982?

22 A Yes. On that night of December, a few people get to the

23 house and start knocking the door. And then my father get up

24 and he ask who was knocking the door. And they said never

25 mind, just open the door or we break the door down.

1 And then my father opened the door. As soon as he opened  
2 the door, they grab him and start beating him up.

3 Q I'm sorry. Mr. Cristailes, you said there were people at  
4 the door. Can you tell me approximately how many people?

5 A There were like six.

6 Q And how were they dressed, do you remember?

7 A Like normal clothes.

8 Q So you said that they knocked on the door, and this was at  
9 night?

10 A Yes.

11 Q And they beat up your father. What happened next? What  
12 do you remember?

13 A They even beat up my mother and my oldest brother and they  
14 march us to the school and the church. My father and me and my  
15 oldest brother, they took to us the school. And my mother and  
16 my youngest brother and sister, we went to the church.

17 Q And then do you remember what happened when you were in  
18 the church with your mother and some of your siblings?

19 A Yes.

20 Q Can you tell me what happened?

21 A Well, we started at the church. We started, you know,  
22 praying because they was saying us, if you believe in God, just  
23 pray it because nobody will save you.

24 Q Who was saying that?

25 A The guys who was there in the church. And then we can,

1 you know, hear the next morning start torturing, killing even,  
2 mens and womans. They take the mens and they start, you know,  
3 torturing, killing them. And you can hear them because was  
4 close. And also they took the young girls and started raping  
5 and.

6 MS. ROSEN-EVANS: Object, Your Honor. I would object  
7 to the narrative. I think there would have to be specific  
8 questions and they need to be tied to Mr. Jordan.

9 THE COURT: Ask your next question.

10 BY MS. DAVIDSON

11 Q You describe some of the things that you have seen. Can  
12 you tell me or you have described what was happening. Can you  
13 tell me how you knew this was happening?

14 A Because the church was built by wood, so you can see  
15 inside.

16 THE COURT: Just move back a little bit. That's good.

17 THE WITNESS: When was my mom's turn, they grabbed my  
18 mom from his hair and I -- me and my brothers --

19 MS. ROSEN-EVANS: Again, Your Honor, I would have to  
20 object, unless the government can tie this to Mr. Jordan, I  
21 would object on the grounds of relevancy.

22 THE COURT: I'll overrule the objection at this point.

23 BY MS. DAVIDSON

24 Q You may continue, Mr. Cristailes.

25 A They grabbing my mom and grabbed my mom from his leg, and



1 one man grabbed me from his mom and he told me, don't go with  
2 your mom because you will get killed. So he put me inside the  
3 church, and I ran to see what they will do to my mom, so --

4 Q What did you see?

5 A I see when a man took my little daughter from my mom's  
6 arms and grabbed his legs and smash him to the tree and threw  
7 him into the well.

8 Q You said daughter, did you mean --

9 A My sister.

10 Q Your sister. How old was your sister at this time?

11 A Like nine months.

12 Q And then after someone smashed your sister against a tree  
13 and threw her into the well, then what happened?

14 A Then my mom was underneath, was begging for his life. And  
15 they don't care. They just cut his throat and throw it into  
16 the well.

17 Q They cut whose throat?

18 A Yes, my mom's, my brother's.

19 Q And what happened to you?

20 A I was watching and I couldn't watch no more. I fall  
21 asleep until next morning, so everything was done. The  
22 massacre was finished.

23 And then they --

24 MS. ROSEN-EVANS: Objection, Your Honor. I would ask  
25 that specific questions be asked of the witness.

1 THE COURT: Ask your next question.

2 BY MS. DAVIDSON

3 Q Mr. Cristailes, after the massacre was done, what happened  
4 next? What do you remember?

5 A I remember when we was four kids and we went to the jungle  
6 for few days and they called to the helicopter to went to pick  
7 us up.

8 Q Let me ask another question because I'm not sure that I  
9 understand. You described four kids.

10 A Yes, three and myself would be four.

11 Q Who did you go into the jungle with?

12 A With the people who do the massacre.

13 Q The people who did the massacre?

14 A Yes.

15 Q And then after you were in the jungle with them, then what  
16 happened?

17 A They called the helicopter, and then the helicopter went  
18 to pick up and take us to the base.

19 Q What base did the helicopter take you and these other  
20 children to?

21 A Army base.

22 Q And how long were you at the Army base for?

23 A It was like two months.

24 Q And after these two months, where did you go next?

25 A Mr. Santos, he took me to his home.

1 Q Who is Mr. Santos?

2 A He was a Kaibil.

3 MS. ROSEN-EVANS: Your Honor, I would object in terms  
4 of relevancy. This is conduct outside anything that my client  
5 was involved in. This is conduct where one of the kaibils took  
6 this young, this person, and kept him for probably 15 years or  
7 so in his home. My client had absolutely nothing to do with  
8 that and I feel it's irrelevant and highly prejudicial.

9 MS. DAVIDSON: I'm done, Your Honor.

10 THE COURT: All right.

11 BY MS. DAVIDSON

12 Q One last question. Where -- are you still living in  
13 Guatemala?

14 A No.

15 Q And why is that?

16 A Well, because I'm scared.

17 Q One final question about the massacre, what you remember.

18 You mentioned what happened to your mother and your sister. Do  
19 you know what happened to your father and your other siblings?

20 A Yes.

21 Q Can you tell me what happened?

22 A When we get up to the church, I see my father and my older  
23 brothers hanging from the tree.

24 Q How about your other siblings?

25 A They was in the well.

1 Q Did you see them being killed?

2 A Yes.

3 Q How about everyone else in the village, did you -- what  
4 happened to them?

5 A They was killed too. There was bodies all over.

6 MS. DAVIDSON: May I approach, Your Honor?

7 BY MS. DAVIDSON

8 Q Mr. Cristailes, I've handed you what's been marked as  
9 Government's Exhibit 10. Do you recognize that photograph?

10 A Yes.

11 Q And can you please tell the Court what it is?

12 A That's me dressed in a boy scout.

13 Q And approximately how old were you in that photograph?

14 A Like eight, nine years old.

15 MS. DAVIDSON: Your Honor, the government moves to  
16 admit Government's Exhibit 10.

17 THE COURT: Any objection?

18 MS. ROSEN-EVANS: No, Your Honor.

19 THE COURT: Government's 10 is in evidence.

20 (Thereupon, Government's Exhibit No. 10 was received  
21 in evidence.)

22 MS. DAVIDSON: Thank you very much, Mr. Cristailes.

23 THE WITNESS: Thank you.

24 THE COURT: Cross-examination.

25 MS. ROSEN-EVANS: I have no questions for this

1 witness, Your Honor.

2 THE COURT: Thank you. You may step down. Watch your  
3 step please.

4 Call your next witness.

5 MS. DAVIDSON: Your Honor, we have no further  
6 witnesses.

7 THE COURT: The government rests.

8 MS. DAVIDSON: No, Your Honor, the government has  
9 legal argument -- well, legal argument.

10 THE COURT: Do you rest with your --

11 MS. DAVIDSON: Yes, we do.

12 THE COURT: Any testimony or evidence on behalf of the  
13 defense?

14 MS. ROSEN-EVANS: No, Your Honor, just argument.

15 THE COURT: Let me hear argument from the government,  
16 then I'll hear from the defense.

17 MS. DAVIDSON: Your Honor, this may be the worst  
18 naturalization fraud case to ever come before you.

19 Congress provided for a ten-year statutory maximum for  
20 the crime of naturalization fraud. Clearly congress envisioned  
21 a case where the lies involved matters so serious that they  
22 warranted a ten-year sentence.

23 And this case involving a defendant who participated  
24 in a massacre of at least 162 unarmed and innocent men, women,  
25 and children, a massacre that wiped an entire village off the

1 face of this earth and a massacre that started when the  
2 defendant threw a baby into the well is that case that cries  
3 out for the ten-year statutory maximum.

4 This case is so atypical, so far outside the  
5 heartland, that a 0 to 6 month sentence is wholly insufficient.  
6 That is why the government has requested an upward departure  
7 under section 5K2.0 of the United States sentencing guidelines.

8 Because the atrocities about which Mr. Jordan lied  
9 constitute that aggravating circumstance of a kind to a degree  
10 that the sentencing commission did not take into account in  
11 formulating the guideline range.

12 Counsel for defendant has argued that the  
13 circumstances of this case are not atypical, that it does not  
14 lie outside the heartland. The government certainly hopes that  
15 that's not the case and that there aren't, in fact, hundreds  
16 and hundreds of naturalized United States citizens walking  
17 around who also lied about their participation in massacre of  
18 innocent people.

19 Your Honor, this is not the paradigmatic  
20 naturalization fraud case involving, for example, a lie about a  
21 shoplifting crime. An 11th Circuit law allows this Court to  
22 take into account prior acts of misconduct that relate  
23 meaningfully to the offense of conviction, and there is no  
24 question here that the massacre which Mr. Jordan participated  
25 is inextricably intertwined with the lies that he told during

1 the naturalization process in order to hide those crimes.

2 The government, because the government is using the  
3 murders as a basis for its request for the upward departure  
4 under 5K2.0 of the sentencing guidelines, the offense level  
5 would be 43, which is life, but because the statutory maximum  
6 is ten years, the government would then look to an offense  
7 level of 32.

8 If Your Honor credits the acceptance of responsibility  
9 and it is, of course, the defendant's burden to bear on that,  
10 on the acceptance of responsibility, then it would go down to  
11 level 30, approximately eight years.

12 But, Your Honor, the government submits that this case  
13 is so atypical that once you do the analysis under the  
14 guidelines, we would ask that you exercise your discretion and  
15 impose a sentence -- impose an upward variance.

16 As the 11th Circuit stated in the United States versus  
17 Irey, decisions to vary may attract greatest respect when the  
18 sentencing judge finds a particular case outside the heartland  
19 to which the commission intends individual guidelines to apply.

20 We ask that you impose this variance after considering  
21 the factors that are listed in Title 18 United States Code  
22 Section 3553(a). Some of those factors include the nature and  
23 circumstances of the offense, the need for the sentence imposed  
24 to promote respect for the law, and to provide just punishment  
25 for the offense.

1           In this case, Mr. Jordan admitted to killing a baby.  
2       He then participated in the killing of countless other men,  
3       women, and children. He has made an 11th hour claim that he  
4       was forced to do this. However, there's never been any  
5       testimony that his superiors -- that he claimed his superiors  
6       would kill him if he did not participate in the massacre. And,  
7       in fact, after the massacre, he went back to the kaibil school  
8       to become a full-fledged kaibil.

9           A few years after he participated in this massacre, he  
10      flouted United States law by slipping into this country  
11      illegally, and then a few years after that, he lied during the  
12      naturalization process and hid his murderous past.

13           By his fraud he prevented United States officials from  
14      doing their jobs to insure that the individual before them was  
15      entitled to United States citizenship.

16           Your Honor, naturalization is something to which many  
17      aspire. Many work hard and spend years in order to become  
18      United States citizens. Frankly, it would be an insult to  
19      these hard working people who will obtain their citizenship  
20      honestly and played by the rules for Mr. Jordan who was never  
21      entitled to citizenship in the first place to be given a slap  
22      on the wrist.

23           It is because the nature and circumstances of this  
24      offense are so serious, because of the need for this sentence  
25      to reflect the seriousness of the offense, the need for it to



1 promote respect for the law and to provide just punishment that  
2 the government is requesting a sentence of years and not  
3 months.

4 In terms of some of the other factors listed in  
5 section 3553(a) such as personal history and characteristics of  
6 the defendant, Your Honor should and must take into account  
7 what he did in Guatemala.

8 Defendant's counsel argues that because he has  
9 committed no crime of violence in this country, that you  
10 shouldn't consider what he did in Guatemala. That simply is  
11 not true, Your Honor.

12 Finally, section 3553(a) requires that this Court  
13 impose a sentence that provides adequate deterrence. Counsel  
14 for defendant has argued that Mr. Jordan's lies were unto  
15 themselves that allowed him to live in this country peacefully  
16 for many years. But that's precisely the point, because he  
17 never should have been allowed to live here peacefully for many  
18 years.

19 This country has been a haven for people who fled  
20 crimes of violence. The United States has a strong interest in  
21 ensuring that this country does not become a haven, a home, for  
22 those who committed those acts of violence.

23 A long sentence will send the message that those who  
24 commit human rights violations in other countries cannot come  
25 to the United States and make their home here and live here

1 peacefully for years. They do -- if they come here, if they  
2 lie about their crimes of violence, they will be punished  
3 severely.

4 Finally, Your Honor, I would like to just address an  
5 argument the defendant's counsel made in her papers which is  
6 that the offenses were not so serious here because it's not as  
7 if Mr. Jordan lied to obtain his citizenship in order to commit  
8 acts of terrorism. But, Your Honor, section 1425 of Title 18  
9 United States Code provides a higher statutory maximum for  
10 those who obtain their naturalization fraudulently in order to  
11 commit acts of terrorism, 25 years versus the statutory maximum  
12 of 10 for those who obtain their naturalization fraudulently  
13 and all other cases where terrorism and drugs are not involved.

14 That, Your Honor, is the sentence that we are  
15 requesting here today. We believe that this sentence is  
16 sufficient but not greater than necessary and reflects -- and  
17 is reasonable. Thank you, Your Honor.

18 THE COURT: All right. Thank you.

19 Ms. Rosen-Evans.

20 MS. ROSEN-EVANS: Thank you, Your Honor.

21 First, Your Honor, before I begin my argument, I would  
22 like to point out two factual statements which the prosecutor  
23 just made to the Court which there has been no evidence to  
24 support during its case.

25 Number one, that my client slipped into this country

1 illegally, and number two, that he, in fact, started the  
2 massacre. There's been no evidence to support those assertions  
3 by the government, and I would ask the Court to disregard those  
4 statements as being unfounded.

5 In terms of, I would just like to briefly address the  
6 issue of the acceptance in that although the government said he  
7 would not go forward, it keeps coming back to what they call --

8 THE COURT: Just a moment.

9 Go ahead.

10 MS. ROSEN-EVANS: Thank you. -- my client's 11th hour  
11 claim that he was following orders and that he had been  
12 threatened.

13 I think it's quite clear from the testimony of Agent  
14 Longo that this is far from an 11th hour claim. When my client  
15 first made contact with Agent Longo at his house, he told Agent  
16 Longo that he had been ordered to participate in the Dos Erres  
17 massacre, that he did not want to, that he was told that if he  
18 didn't, that he would be killed.

19 He said that the first time he met Agent Longo. He  
20 said that the next time he met Agent Longo which was at a  
21 meeting at the United States Attorney's Office and at a meeting  
22 at his lawyer's office. So this is not an 11th hour claim in  
23 any way, shape, or form.

24 Now, getting to the government's arguments, Your  
25 Honor, I'll take the departure arguments under 5K2 first, Your

1 Honor, and then I will move to the issue of a variance under  
2 3553.

3 The government seeks an upward departure pursuant to  
4 5K2 of the sentencing guidelines citing a number of different  
5 reasons.

6 Number one, they claim that the circumstances of  
7 Mr. Jordan's case are atypical or outside the heartland. And I  
8 would argue to the Court that Mr. Jordan's case, the conduct  
9 for which this Court is sentencing Mr. Jordan which is the lie,  
10 the lie, the concealment on his naturalization application is  
11 not atypical. Mr. Jordan lied on his citizenship application  
12 about past behavior. The fact that the lie was to conceal his  
13 involvement in what occurred at Dos Erres does not take the  
14 case outside the heartland. It is the act of concealment which  
15 is the crime, the act of concealment is the crime that this  
16 Court must sentence him for. It is not the crime that occurred  
17 in Dos Erres.

18 THE COURT: Are you saying that I cannot consider what  
19 took place during the massacre?

20 MS. ROSEN-EVANS: I think that you have to be very  
21 careful in how you consider it, Your Honor.

22 We know that there are a number of factors under 3553  
23 that you need to consider and you have to balance those  
24 factors. I think that you can consider the circumstances to a  
25 certain degree.

1 THE COURT: Well, I mean, what I'm trying to find out,  
2 what I would like for the defense to clarify for the record is  
3 you agree that your client participated in the massacre?

4 MS. ROSEN-EVANS: He has admitted that, Your Honor.

5 THE COURT: And you agree that he threw a baby that  
6 was alive down a well?

7 MS. ROSEN-EVANS: He has admitted he threw the baby  
8 down the well and that he also brought people to the well.

9 THE COURT: All right. So now that -- and that has  
10 not been objected to by the defense in the presentence report.

11 MS. ROSEN-EVANS: That is correct, Your Honor.

12 THE COURT: And so that takes me to my last question a  
13 few questions ago. Can I consider what your client did with  
14 respect to sentence here today?

15 MS. ROSEN-EVANS: I think you can consider it, but it  
16 cannot be the sum total of your -- what consumes your decision  
17 which is, I think, the error in the government's argument to  
18 you.

19 I think you can consider what the -- what was being  
20 concealed, but that is not what you can sentence him for. You  
21 can't sentence him for what occurred at Dos Erres.

22 THE COURT: I understand that.

23 MS. ROSEN-EVANS: You have to sentence him for the act  
24 of concealment. And my argument is that --

25 THE COURT: But it is conduct that the Court can

1 consider.

2 MS. ROSEN-EVANS: But it's not relevant conduct. I  
3 think even the government concedes and as correctly pointed out  
4 in the presentence report, it is not relevant conduct.

5 THE COURT: But it's the conduct about which he lied.

6 MS. ROSEN-EVANS: That's true. But I think the  
7 question becomes how you balance that with all of the other  
8 factors and what weight you give it. And that's where the  
9 government falls into its trap. They want you to use just  
10 that, just what happened at Dos Erres that is the sum total of  
11 their argument. But it can't be because I would argue that you  
12 have to be very cautious in how you use that information.

13 THE COURT: What weight do I give to the fact that he  
14 killed a baby?

15 MS. ROSEN-EVANS: I think you can use -- you can look  
16 at that in terms of his history and personal character -- his  
17 personal history and characteristics. But I don't think it's  
18 relevant conduct to the offense. I don't think it's offense  
19 conduct. The offense is the concealment, the lie.

20 THE COURT: But it is the murder that he concealed,  
21 that he lied about.

22 MS. ROSEN-EVANS: That's true. I mean, there's no  
23 getting away from that. And that's why this case is a  
24 difficult one. I admit it is difficult. But it's cases like  
25 this where it is so important to look at the case law and the

1 caveat that not one factor should control, when you improperly  
2 balance these factors, that's when error occurs. You can't  
3 say, okay, he killed this baby, ten years. I mean, that's  
4 basically what the government is asking you to do.

5 THE COURT: Well, it's not like he lied about stealing  
6 candy from a grocery store.

7 MS. ROSEN-EVANS: No, but if you look at the end  
8 result, Your Honor, it would be the same. Someone -- the crime  
9 is someone who shouldn't be here.

10 THE COURT: So what's the worth of a baby?

11 MS. ROSEN-EVANS: I'm not saying that. What I'm  
12 saying is the conduct, the end result, is that someone who for  
13 whatever reason shouldn't be here.

14 THE COURT: If I can consider the fact that he  
15 murdered a baby, he was involved in other murders as well, but  
16 I am just talking about the baby, if I can consider the fact  
17 that he murdered a baby, and then lied about that, what is the  
18 value of the life of a baby?

19 MS. ROSEN-EVANS: Then I think you also have to  
20 consider that he was in the military, he was ordered to do it  
21 and he felt threatened, that his life was going to be  
22 threatened.

23 THE COURT: If that's the case, you are saying that  
24 that excuses his conduct?

25 MS. ROSEN-EVANS: No. No.

1 THE COURT: Because if that is the case, then the  
2 individuals that were on trial at Nernberg would never have  
3 been convicted, the ones that were just, quote, following  
4 orders.

5 MS. ROSEN-EVANS: No, that's not what I'm saying,  
6 Judge. What I'm saying is you have to then also understand the  
7 context in which these things occurred.

8 I'm not saying that that is a justification or a legal  
9 excuse. But I'm saying it is an explanation and it would go  
10 toward mitigation. It's mitigation and extenuation. Why he  
11 did what he did may not be a legal defense, but certainly, just  
12 as it is what the government is asking that he committed the  
13 act, it is certainly appropriate that you consider why he  
14 committed the act.

15 It may not be a legal defense. We don't even know  
16 that because we are not a court of law in Guatemala. We are in  
17 the United States of America.

18 So we don't know whether or not at some later point  
19 when he does face justice in Guatemala, that it may well be  
20 some sort of a defense. I don't know. But I'm just saying it  
21 is an explanation. It is not an excuse. And those are two  
22 very different things regardless of what the government is  
23 saying.

24 So getting back to my argument, Your Honor, as to the  
25 5K2 departure, I would argue that Mr. Jordan's behavior during



1 the past 20 years that he has been in this country show that  
2 his case is typical, not atypical for the following reason:

3 Nothing about Jordan's conduct while he has been  
4 living here has resulted in the American public being exposed  
5 to any greater degree of danger than we would be from any other  
6 person violating the same statute by concealing past criminal  
7 behavior.

8 During the time that Mr. Jordan has been here, he has  
9 had one DUI. That is it. He has lived in Palm Beach County.  
10 He has worked steadily, sometimes two jobs.

11 THE COURT: But he never should have been here in the  
12 first place.

13 MS. ROSEN-EVANS: I understand that. But when we talk  
14 about.

15 THE COURT: And the only reason that he's here is  
16 because he lied.

17 MS. ROSEN-EVANS: But we can --

18 THE COURT: And he lied about killing a baby.

19 MS. ROSEN-EVANS: But we can look at his conduct while  
20 he's here to see whether or not his being here posed any  
21 greater danger than anyone else violating the same statute  
22 which I think is a comparison that this Court needs to make if  
23 it's going to determine a harsher sentence than the guidelines  
24 is appropriate.

25 So what I'm saying is Mr. Jordan's own conduct while

1 he has been here has shown that him being here, even though he  
2 shouldn't have been here in the first place, has posed no  
3 greater danger than any other defendant violating the same  
4 statute. That's why I bring that to the Court's attention.

5 THE COURT: Well, what you are really arguing is that  
6 because -- what you have just argued is that because your  
7 client participated in a mass murder and then came here and has  
8 been a model citizen, that he should get a free pass.

9 MS. ROSEN-EVANS: No, not at all. I'm not saying he  
10 should get a free pass.

11 THE COURT: He should get a 0 to 6 month sentence.

12 MS. ROSEN-EVANS: He should get a reasonable sentence.

13 THE COURT: And that would be reasonable, 0 to 6  
14 months?

15 MS. ROSEN-EVANS: I would argue that based upon the --  
16 may I have one moment, Your Honor?

17 THE COURT: I mean, 0 to 6 months would be a  
18 reasonable sentence for an individual who lied about his past.

19 MS. ROSEN-EVANS: The guideline commission based upon  
20 empirical study, that guideline, 2L2.2, said 0 to 6 is  
21 reasonable. They identify specific factors which they feel  
22 could support a harsher sentence. And those are located at  
23 2L2.2() (1), (2) and (3). And none of those apply to  
24 Mr. Jordan.

25 I'm just saying, Judge, that --

1 THE COURT: Let me ask you this.

2 MS. ROSEN-EVANS: Yes, Your Honor.

3 THE COURT: Are you aware of any other case since the  
4 guidelines have come into existence that had these facts?

5 MS. ROSEN-EVANS: I have three cases that the  
6 government cited which I can distinguish, and I'm more than  
7 happy to discuss them now or if you would like me to --

8 THE COURT: Are you aware of any other case that has  
9 these facts?

10 MS. ROSEN-EVANS: I'm aware of --

11 THE COURT: Where an individual lied on his  
12 application who had a background of being a mass murderer?

13 MS. ROSEN-EVANS: In U.S. versus I-K-O-N-I-C, which is  
14 cited in the government's response, Mr. Ikonik in that case, he  
15 was a member of the special police brigade in Bosnia during the  
16 war. He concealed these facts. I think it was on a visa --  
17 well, actually, here we go.

18 He sought admission to the United States as a refugee  
19 claiming fear of returning to Bosnia. He made several false  
20 statements in his application and denied under oath any  
21 involvement in the war in Bosnia. He was granted admission to  
22 the United States as a refugee in 2002.

23 In actuality, he served as a member of the special  
24 police brigade in Bosnia during the war. He concealed these  
25 facts because he knew their disclosure would prevent his

1 admission.

2 THE COURT: Well, that was because he was a member of  
3 this force, this police force.

4 MS. ROSEN-EVANS: Well, the Court found that he was --

5 THE COURT: What I would like for you to do is answer  
6 my question. Are you aware of any other case in the history of  
7 the guidelines that have these facts?

8 MS. ROSEN-EVANS: That a person lied about killing a  
9 baby?

10 THE COURT: That a person who was a mass murderer lied  
11 on his application about being a mass murderer.

12 MS. ROSEN-EVANS: I don't -- I don't know that I  
13 would -- I don't know of any facts -- any cases with those  
14 specific facts. I only know --

15 THE COURT: So how do you say this case is not  
16 atypical?

17 MS. ROSEN-EVANS: Because I think -- because I think  
18 that what the Court must look at is the conduct in this  
19 country, what the crime was, which was the concealment of the  
20 lie as opposed to the conduct that occurred in Guatemala.

21 THE COURT: All right. Go ahead.

22 MS. ROSEN-EVANS: Thank you, Your Honor.

23 The government next seeks a departure under the same  
24 subsection 5K2 because the murders at Dos Erres were not  
25 considered relevant conduct and his criminal behavior which did

1 not result in a conviction. I'm going by their pleading, Your  
2 Honor.

3 Again, I would argue to the Court that the events at  
4 Dos Erres occurred outside the jurisdiction of the United  
5 States, that Mr. Jordan has not yet proceeded to trial, and  
6 what the government is asking the Court to do is to impose this  
7 ten-year sentence for conduct which Mr. Jordan has not yet been  
8 convicted which occurred outside the United States which is not  
9 relevant conduct and to obtain the maximum sentence for an  
10 unrelated -- or for a separate crime which occurred in the  
11 United States decades later.

12 I would argue that the government's position is wrong  
13 because it seems to sentence Mr. Jordan here for crimes in  
14 Guatemala for which the American people are not the victim and  
15 for which this -- for which he is not being convicted.

16 The government's position is also wrong because it  
17 seeks to place the United States in a position superior to that  
18 of the Guatemalan people who are, in fact, the only true  
19 victims or the only victims of Dos Erres. The massacre  
20 occurred in a sovereign nation over which this government has  
21 no authority, a nation that has its own laws and system of  
22 justice.

23 By seeking a ten-year sentence on this case, the  
24 government is placing its rights or what it believes its rights  
25 over the inherent right of the people of Guatemala to obtain

1 justice in their own court system for what happened.

2 Keeping Mr. Jordan here for ten years for the crime of  
3 lying on a U.S. citizenship application prevents him from  
4 returning to Guatemala to stand trial for the very crime which  
5 the government is relying upon to request the ten-year  
6 sentence.

7 What the government is really saying, I believe, Your  
8 Honor, is that Mr. Jordan's past criminal conduct is not  
9 adequately reflected in criminal history category 1. If the  
10 Court finds that that is the case, although we are not  
11 conceding it, then pursuant to 4A1.(3) departures based on  
12 inadequacy of criminal history category, the guidelines provide  
13 that the Court is do structure the departure by moving  
14 incrementally across the sentencing table to the next highest  
15 criminal history category.

16 And at each criminal history category, the Court must  
17 state why the sentencing range within that category is or is  
18 not sufficient.

19 After reaching criminal history category 6 --  
20 Mr. Jordan is in criminal history category 1 -- the Court shall  
21 then start going down the sentencing table by offense level  
22 stopping at each successive offense level stating why the new  
23 sentencing range is or is not sufficient to produce a  
24 reasonable sentence.

25 Again here we would argue 4A1.3 departure is not

1 appropriate because Mr. Jordan has not been convicted of any  
2 crime yet.

3           The government next seeks a variance pursuant to  
4 3553(a). I would argue to the Court that the law in this  
5 circuit is that a within the guideline range sentence is  
6 ordinarily considered reasonable. U.S. v. Hunt, 526 Fed. 3d  
7 739, an 11th Circuit case decided in 2008 because when a judge  
8 sentences within the range recommended by the sentencing  
9 guidelines, he or she makes a decision that is consistent with  
10 the commission's judgment at which as to this particular  
11 guideline 2L2.2 coupled with the criminal history guideline is  
12 based upon empirical evidence.

13           Additionally, even a 3553(a) variance requires that  
14 the policy statements for guideline departures be considered at  
15 the time of a decision to vary pursuant to 3553(a) in that the  
16 Court must consider the guidelines and policy statements. And  
17 as I have stated, those policy statements do not support a  
18 departure under 5K.

19           We would argue that a sentencing range within the  
20 guideline range is reasonable, but to address the government's  
21 specific variance arguments, again, the government argues that  
22 the nature and circumstances of Mr. Jordan's case warrant a  
23 variance because the case is out of the heartland for the same  
24 reasons they argue for departure.

25           Again, I would argue that the nature and circumstances

1 of Mr. Jordan's conduct do not call for a variance. He lied  
2 about his past in order that his citizenship application be  
3 granted. He did not lie in order to gain citizenship for a  
4 reason exclusive of his desire to live here. And he did not  
5 seek to obtain citizenship in order to use that status to  
6 commit any greater harms against the people of the United  
7 States.

8 The lie was an end in itself and allowed Mr. Jordan to  
9 live here until May 4th, 2010 when he voluntarily disclosed his  
10 involvement to Agent Longo.

11 That's another thing, Your Honor, he voluntarily  
12 waived counsel, waived Miranda, gave a full statement to Agent  
13 Longo on May 4th, 2010.

14 I would argue, Your Honor, that the nature and  
15 circumstances of the -- the nature and circumstances of the  
16 offense is the act of concealment. Regardless of what was  
17 concealed, it is the act of concealment and not the massacre  
18 itself that is what he's being sentenced for.

19 The government next argues that Mr. Jordan's history  
20 and characteristics warrant a variance. Again the government  
21 focuses on Dos Erres to the exclusion of everything else. As  
22 our circuit court instructed us in Irey, what this Court must  
23 do is distinguish among defendants who commit a particular  
24 offense to see if there is some factor that makes an individual  
25 defendant worthy of a harsher sentence.



1           And I would argue that what the Court must focus on is  
2 the conduct that occurred in this country, in the United  
3 States. And there is nothing about Jordan's conduct while in  
4 this country that takes his history and personal  
5 characteristics out of the Myron case. While here, he has  
6 committed -- never committed any act which harms the people of  
7 the United States. Rather, a review of his history and  
8 personal characteristics show that while in this country -- and  
9 this Court must consider and should consider the conduct that  
10 occurred while in this country, as it relates to the  
11 vindication of the rights of our citizens, because that's what  
12 our criminal law is for it is to vindicate the rights of the  
13 United States of America and not to vindicate the rights of  
14 another people in another country -- he has led a law abiding  
15 life.

16           Granted, as the Court pointed out, he should not have  
17 been here to begin with, and we concede that. But I think it  
18 is also instructional to look at the life he has led while he  
19 has been here. He worked steadily, raised three children,  
20 became a homeowner, and contributed to the welfare of his  
21 village back in Guatemala as attested to by the submissions I  
22 have prepared and given to the Court.

23           His family is in the back. One of his sons is in  
24 uniform today. He is a sergeant in the Marines and has served  
25 our country in Iraq two separate tours of duty.

1           Next the government seeks a higher sentence because it  
2       claims that only a ten-year sentence can adequately reflect the  
3       seriousness of the crime, promote respect for the law, and  
4       provide just punishment and sufficient deterrence.

5           First, as to the serious nature of the crime, the  
6       government asserts that because the lie was to conceal his  
7       involvement in the massacre, a longer sentence is warranted.  
8       But the criminal act in this country, which was the lie, is the  
9       lie itself. The act of concealment is not extraordinary. That  
10      is the conduct which you must consider in determining whether a  
11      variance is appropriate and to what extent you would vary if  
12      you chose to.

13          His act of concealment is not any more serious than  
14      any other person who seeks to hide some past misconduct which  
15      if known would exclude them from becoming a citizen. The end  
16      result of Mr. Jordan's lie and any other person's lie about  
17      past misconduct serious enough to exclude them obtaining  
18      citizenship is the same. Someone obtains citizenship who would  
19      otherwise be excluded.

20          Mr. Jordan's conduct is, therefore, not more serious  
21      thus warranting a longer sentence than any other person  
22      committing the same crime.

23          The government next argues that a longer sentence is  
24      necessary to promote respect for the law and provide deference.  
25      Specifically as it relates to --

1 THE COURT: Are you reading from your response? I  
2 mean, because that's in the record.

3 MS. ROSEN-EVANS: I understand, Judge. I'm  
4 summarizing it. I just want to make sure --

5 THE COURT: I'm going to need for you to begin to wrap  
6 up.

7 MS. ROSEN-EVANS: Okay. Thank you, Your Honor.

8 I would argue, Your Honor, that there is no evidence  
9 in the record which indicates a longer sentence is needed to  
10 specifically deter Mr. Jordan from any future criminal conduct.  
11 I would also argue that a longer sentence is not necessary to  
12 promote general deterrence in that the fact that the government  
13 is bringing this prosecution after so many years, stripping  
14 Mr. Jordan of his citizenship, and returning him to Guatemala  
15 to face criminal prosecution sends a strong message to the  
16 community or to the world that the United States will not allow  
17 itself to be a haven for law violaters of other countries.

18 And in conclusion, Your Honor, I would like to briefly  
19 discuss the three cases that the government cited in its  
20 response. The first one, I started to --

21 THE COURT: You have two minutes.

22 MS. ROSEN-EVANS: Okay. Your Honor, the cases that  
23 the government cited in those cases, the Court found that a  
24 harsher sentence was appropriate because the defendant claimed  
25 to be a refugee, someone who was seeking shelter from

1 prosecution, when, in fact, they, in fact, they were  
2 persecutors.

3 The Court found that a lie within a lie was an  
4 aggravating factor thus supporting the harsher sentence. The  
5 harshest sentence given was 63 months in the Bostic case where  
6 the Court on 3553 variance used a guided departure structure to  
7 structure the extent of the variance, and it was not an  
8 unguided departure which is what the government is asking for.

9 Your Honor, I ask you to give Mr. Jordan a sentence  
10 within the guidelines. Thank you.

11 THE COURT: Ms. Evans, are you available tomorrow?

12 MS. ROSEN-EVANS: Judge, I have a --

13 THE COURT: You have a matter?

14 MS. ROSEN-EVANS: Yes, I have a sentencing -- well,  
15 it's not really a sentencing. I have a hearing before Judge  
16 Middlebrooks at 10:00 in West Palm Beach.

17 THE COURT: And then you are free?

18 MS. ROSEN-EVANS: I am free the rest of the day, Your  
19 Honor.

20 THE COURT: What about the government tomorrow, what  
21 do your schedules look like?

22 MS. VILLAFANA: Your Honor, I can be available any  
23 time tomorrow.

24 MS. DAVIDSON: Your Honor, I can too.

25 THE COURT: All right. Because of the hour and I want

1 to take a look at a couple of things, we'll go ahead and  
2 recess. And I would like everyone to return here at -- let me  
3 ask you to return here at 11:45.

4 MS. ROSEN-EVANS: Your Honor, I don't believe that  
5 that's enough time. I believe --

6 THE COURT: For you to get here?

7 MS. ROSEN-EVANS: The matter before Judge Middlebrooks  
8 should take approximately an hour. It starts at 10:00.

9 THE COURT: All right. Then let me ask you to return  
10 here at 1:15. 1:15 tomorrow, and I'll give you my ruling, and  
11 then we'll finish up with sentencing.

12 Marshal, this is not on your calendar, so you are  
13 going to have to have Mr. Jordan here tomorrow.

14 THE MARSHAL: We'll take care of it, Judge.

15 THE COURT: All right. Court is in recess until 1:15  
16 tomorrow. Thank you.

17 (Thereupon, the hearing was adjourned at 6:39 p.m.)

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C E R T I F I C A T E

I hereby certify that the foregoing is an  
accurate transcription of the proceedings in the  
above-entitled matter.

10/8/10

s/ Tammy Nestor  
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